W-2049

National Labor Relations Board

Weekly Summary of NLRB Cases

Division of Information Washington, D.C. 20570 Tel. (202) 632-4950

22 - 26 DECEMBER 1986 W-2049

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Moore & Wittenborn Grocery, Inc. (14--CA--18476; 282 NLRB No. 76) Chester, Ill. 22 December. Ruling on a motion for summary judgment, the Board held that since 16 April 1986 the respondent has failed to continue in full force its collective bargaining agreement with the union by refusing and failing to discharge employees who have not joined the union as required by the union-security provision in the contract. It found that sometime between 21 and 31 March 1986, the respondent told an employee that the employee would not be terminated for failing to join the union as required by the contract. The company failed to file an answer to the General Counsel's complaint.

(Chairman Dotson and Members Johansen and Babson participated.)

Charges filed by Food and Commercial Workers Local 219; complaint alleged violation of Act's Section 8(a)(5) and (1). General Counsel's motion for summary judgment filed 2 October 1986.

* * *

Otten Truck Line (17--CA--12053-1, 2, 3; 282 NLRB No. 73) Eldon, MO. 22 December. Affirming an administrative law judge, the Board held the respondent violated the Act by failing to abide by its collective bargaining agreement with Teamsters after it filed for bankruptcy on 12 December 1983.

The owner of H & S Motor Freight, Inc., Claude Hayes, formed an alter ego successor to H & S after petitioning the bankruptcy court. He unlawfully bypassed the union and dealt directly with the employees regarding their wages and benefits. While maintaining the same wage rates H & S had paid and granting the same holidays, Mr. Hayes ceased deducting union dues from employee paychecks, ceased providing contractual sick leave, cut back vacation leave, and stopped making payments to the union's health and welfare fund.

The judge concluded that the allegations concerning altering the contract should be dismissed by applying the rule of Bildisco to the successor as the Board had done in BDJ Contracting Co., Inc., 273 No. 1858 (1985). The Board, however, said the judge erroneously relied on BDJ since the instant case is distinguishable. In BDJ, the operations of the alter egos themselves were subject to the supervision of the bankruptcy court; in this case, there was no evidence that the respondent had been brought within the jurisdiction of the bankruptcy court. Accordingly, the Board held that Bildisco provides no ground to release the respondent from its 8(d) obligation as an alter ego. The 1984 Bankruptcy Amendments modifying Bildisco did not apply to this case because the petition was filed prior to their enactment.

(Chairman Dotson and Members Johansen and Stephens participated.)

Charges filed by Teamsters Local 833; complaint alleged violation of Act's Section 8(a)(5). Hearing at Jefferson City, Mo. on 17 September 1985. Adm. Law Judge James L. Rose's decision issued 19 November 1985.

* * *

Digum Coal, Inc. (9--CA--23385; 282 NLRB No. 80) Iaeger, W. Va. 23 December. The Board majority of Members Babson and Stephens held that the respondent violated the Act by failing and refusing to provide health insurance coverage without a deductible to its employees as provided by its contract with the union. In dissent, Chairman Dotson stated: "There is no evidence that the respondent has engaged in conduct reflecting a repudiation of the collective-bargaining agreement in any way tantamount to a violation of the Act or has otherwise refused to bargain. By finding a violation in these circumstances, the Board is once again showing itself to be used as a collection agency for the charging party."

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by Mine Workers District 29; complaint alleged violation of Act's Section 8(a)(5) and (1) and 8(d). General Counsel's motion for summary judgment filed on 8 October 1986.

* * *

Chelsea Laboratories, Inc. (29--CA--11697; 282 NLRB No. 74) Inwood, N.Y. 22 December. The Board affirmed an administrative law judge's finding that the employer unlawfully discharged the charging party following an argument with the company vice president regarding a wage increase. The panel found no merit to the respondent's contention that the judge found the company violated the Act on a theory of concerted activity other than the theory alleged in the complaint.

The record showed the charging party's protest to the vice president was not directed toward the respondent's grant of a wage increase because decertification election objections were pending. Instead, the protest came in response to a company letter promising the wage increase which represented a decision by the respondent to renege on its promise to hold a dialogue with employees before deciding whether to recognize another Teamsters' local union.

"While all the facts were not specifically alleged in the complaint, we nonetheless find it inaccurate to say that the theory as to the protected nature of (the charging party's) protest is not encompassed by the complaint...," the panel concluded.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by individual; complaint alleged violation of Act's Section 8(a)(1). Hearing at Brooklyn on 28 October 1985. Adm. Law Judge Eleanor MacDonald's decision issued 8 May 1986.

* * *

Koons Ford of Annapolis, Inc. (5—CA—15050; 282 NLRB No. 88) Annapolis, Md. 24 December. Finding that the respondent had engaged in many violations of "an extremely serious nature" to thwart the union's organizing campaign, the Board adopted the administrative law judge's recommendation that a bargaining order be issued. The Board ordered the employer to bargain with the union effective 16 December 1982, the date the union acquired authorization cards from a majority of employees in the unit after the respondent had commenced its unlawful conduct.

The judge noted there were approximately 26 instances from mid-November 1982 until the 12 January 1983 election in which four of the respondent's officials, including President John Koons Jr., either threatened employees with plant closure, discharge, and layoff, more onerous working conditions and stricter work rules leading to the discharge of employees, and loss of privileges and benefits; interrogated employees concerning their union sympathies and the organization campaign; or unlawfully solicited employees to campaign against the union.

(Chairman Dotson and Members Babson and Stephens participated.)

Charges filed by District 65; complaint alleged violation of Act's Section 8(a)(1), (3) and (5). Hearing at Baltimore on 6-9 and 20-24 June and on 17, and 18 October 1983. Adm. Law Judge Marvin Roth's decision issued 30 May 1984.

* * *

DECISIONS OF ADMINISTRATIVE LAW JUDGES

Benham Corporation (Steelworkers), Scottsboro, Ala. 29 December. 10-CA-21888; JD(ATL)—83—86, Lawrence W. Cullen, Adm. Law Judge

Grace Fashions, Inc. (Ladies' Garment Workers Local 144), Newark, N.J. 29 June. 22—CA—14035, 22-CA-14525; JD(NY)—108—86, Winifred D. Morio, Adm. Law Judge

Community Living (Food and Commercial Workers Local 1439), Yakima, Wash. 17 December. 19—CA—16546, 19—CA—16724; JD(SF)—152—86, Earldean V.S. Robbins, Adm. Law Judge

Carpenters Local 720 (National Maintenance Corporation and Tero-Technology) (Individual), Baton Rouge, La. 29 December. 15-CB-3197; JD(ATL)—84—86, Howard I. Grossman, Adm. Law Judge

EDP Medical Computer Systems Inc., Consumers Subscription Center Inc. and Consumers Subscription Service, Inc. (Food and Commercial Workers Local 888 and individual), Jamaica, N.Y. 23 December. 29-CA-12097, et al.; JD(NY)—115—86, Steven B. Fish, Adm. Law Judge

John Coulston, t/a RJC Industries (Teamsters Local 776), Carlisle, Penna. 22 December. 4—CA—15479, 4—RC—16075; JD—324—86, Donald R. Holley, Adm. Law Judge

Marico Enterprises, Inc. (Service Employees Local 1-J), Nanuet, N.Y. 23 December. 2-CA-21619, 2-CA-21703; JD(NY)—114—86, Joel P. Biblowitz, Adm. Law Judge

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